

REMARKS

Applicant initially would like to thank Examiner Patel for the courtesies extended Applicant's representative during the phone interview held on December 11, 2008, summarized above.

By way of summary, Claims 1, 2, 9, 10, 16, 17, 25 and 26 were pending in this application. Claims 1, 2, 9, 16 and 17 were rejected under 35 U.S.C. 102(e) as being anticipated by Beyer et al. (US 6,127,597, hereafter "Beyar"). Claims 10, 25 and 36 were rejected under 35 U.S.C. 103(a) as being unpatentable over Beyar. In this Amendment, Claims 1, 16, 25 and 26 have been amended and Claim 27 has been added. Claims 1 and 16 have been amended in response to the rejections in order to expedite prosecution, and to more clearly define the structure of the subject matter for which protection is sought. Claims 25 and 26 have been amended to more clearly define the structure of the subject matter for which protection is sought. The Applicant respectfully submits that each of these amendments is supported by the specification, drawings, or original claim limitations and does not add new matter. The Applicant respectfully submits that the claims as previously pending are patentably distinguished over the cited references or any combination thereof. Accordingly, Applicant reserves the right to pursue the previously unamended claims or claims of broader scope at a later date. Thus, Claims 1, 2, 9, 10, 16, 17 and 25-27 are pending for consideration in light of the foregoing amendments and following remarks.

The Beyar Reference

Beyar discloses a balloon fixture (also called an expandable intramedullary fixture) 80 comprising a balloon 82 and an inflation tube 88. Col. 26, line 64 – Col. 27, line 9. Figures from Beyar are provided below for the Examiner's convenience:

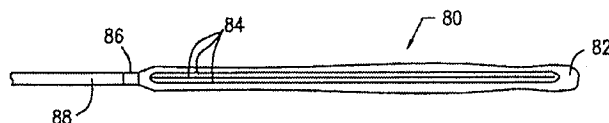


FIG. 6

Figs. 7A-7D show the use of balloon fixture 80 in fixating fractured bone 42 through a hole 45 at an end of the fractured bone 42.

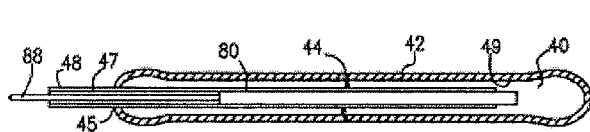


FIG. 7A

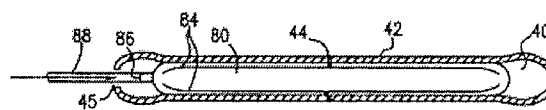


FIG. 7C

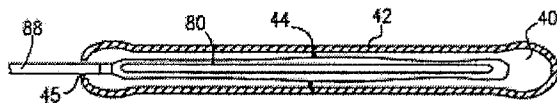


FIG. 7B

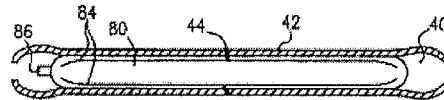


FIG. 7D

The Beyer device involves inserting the balloon 82, filling it with a solidifying fluid “to fixate the bone” and removing the inflation tube 88: “As shown in FIG. 7D, after balloon 82 has been filled and the fluid has at least partly solidified, inlet port 86 is sealed shut, and tube 88 is withdrawn. Within a short time, the solidified fluid fully hardens, anchoring fixture 80 in place and fixating bone 42.” Col. 28, lines 1 – 5. The balloon 82 acts as an implant with a hardened medium contained inside of it, and is left in the bone 42. During the Interview described above, the Examiner noted that Beyer col. 28, line 16 as disclosing removal of the Beyer balloon fixture 80 after the bone has healed: “If desired, after bone 42 has healed, fixture 80 may be removed through hole 45 or via an osteotomy elsewhere in bone 42. Preferably, at least a portion of the solidified fluid is drilled out or broken up, and the fixture is then collapsed and removed.”

The Amended Claims are not anticipated nor rendered obvious by Beyer

At least Figs. 1A and 1B, which show a non-limiting embodiment as claimed in at least independent Claims 1, 10 and 16, read on the elected invention of the present application. A copy of Figs. 1A and 1B from the present application is provided below:

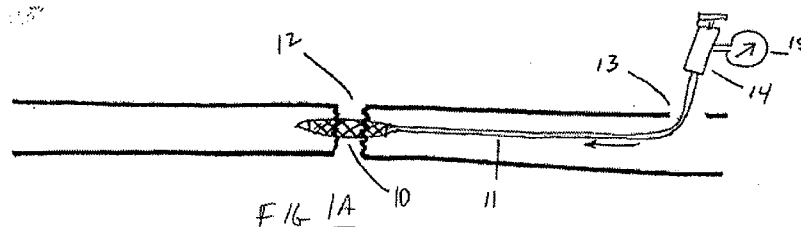


FIG. 1A

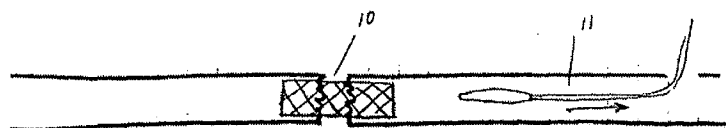


FIG. 1B

As discussed in the Interview, Claim 1 has been amended and recites, in part, “whereby the expanded device mechanically is configured to fixate the fracture after the delivery catheter and the means of expanding the device are removed from the bone.” The Beyar balloon 82 is optionally removable after fixation, thus Beyar does not disclose an “expanded device mechanically is configured to fixate the fracture after the delivery catheter and the means of expanding the device are removed from the bone.”

As discussed in the Interview, Claim 10 already recites, in part, “removing the balloon from the bone; and hardening a substance within the bone segment after the removing the balloon step.” As discussed in the Interview summarized above, the sequence of removing the balloon then hardening a substance “after the removing the balloon step” is not disclosed, taught, or suggested by Beyar.

As discussed in the Interview, amended Claim 16 recites, in part, “the balloon is configured to be removed after leaving the expanded tubular device in place to span bone segments.” As discussed in the Interview, Beyar’s balloon 82 is not “configured to be removed after leaving the expanded tubular device in place to span bone segments.”

Accordingly, at least independent Claims 1, 10 and 16 and their dependent claims are allowable over Beyar. Applicant respectfully requests the withdrawal of the rejections based on Beyar. New claim 27 introduces no new matter and is allowable in light of arguments made with respect to Independent Claim 10, as well as for features recited therein.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

Application No.: 09/733,775
Filing Date: December 8, 2000

Co-Pending Applications of Assignee

Applicant wishes to draw the Examiner's attention to the following co-pending application, which contains a known priority relationship to the present application.

Serial Number	Title	Filed
12/011,115	METHOD AND DEVICES FOR THE TREATMENT OF NASAL SINUS DISORDERS	01/23/2008

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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